

Rule 12, Ariz. R. Crim. P.

GRAND JURY — Defendants have due process rights in grand jury proceedings

— Revised 11/2009

Defendants have due process rights in grand jury proceedings. "It is a requirement of due process that the grand jury be fair and impartial." *Franzi v. Superior Court*, 139 Ariz. 556, 565, 679 P.2d 1043, 1052 (1984). For each defendant whose case is presented to the grand jury, each individual grand juror must be impartial:

Bias in a [grand] juror is predicated upon "(w)hether the existence of a state of mind on the part of the juror is such as will prevent him from acting with entire impartiality." *State v. Salazar*, 27 Ariz.App. 620, 624, 557 P.2d 552, 556 (1976). There is no bias if the juror can base his decision solely on the evidence presented and the law. *State v. Gretzler*, 126 Ariz. 60, 612 P.2d 1023 (1980).

State v. Emery, 131 Ariz. 493, 642 P.2d 838, 851 (1982).

The prosecution must present the evidence to the grand jury in a fair and impartial manner. "[D]ue process compels the prosecutor to make a fair and impartial presentation to the grand jury." *Trebus v. Davis*, 189 Ariz. 621, 623, 944 P.2d 1235, 1237 (1997), *quoting Crimmins v. Superior Court*, 137 Ariz. 39, 41, 668 P.2d 882, 884 (1983). The defendant also has the right to have the State instruct the grand jury on all law that is applicable to the facts of the case, *Walker v. Superior Court*, 191 Ariz. 424, 426 ¶ 4, 956 P.2d 1246, 1248 ¶ 4 (App. 1998), *citing Trebus v. Davis, supra*, and *Crimmins v. Superior Court, supra* at 42.

If the defendant indicates that he wants to testify before the grand jury, the prosecution must inform the grand jury of the defendant's willingness to come forward;

and if the defendant has submitted exculpatory evidence to the prosecution, the prosecution must inform the grand jury that the defendant has done so. See *Trebus*, *supra* at 625. However, it is the grand jury's decision to grant or deny the defendant's request to appear:

The grand jury is, of course, free to either grant or deny the defendant's request, but this choice is for the grand jury and not for the county attorney. See *State v. Just*, 138 Ariz. 534, 540, 675 P.2d 1353, 1359 (App.1983) ("The purpose of [A.R.S. ' 21-412] is obviously to give the grand jury the opportunity to hear the evidence it deems necessary to make its probable cause determination.").

Trebus v. Davis, *supra* at 625, 944 P.2d at 1239.

A grand jury is presumed to have been properly impaneled, until there is a record to the contrary. *State v. Bojorquez*, 111 Ariz. 549, 553, 535 P.2d 6, 10 (1975). A defendant does not have any due process right to question the members of the grand jury concerning their qualifications. In *State ex rel. Hastings v. Sult*, 162 Ariz. 112, 781 P.2d 590 (1989), after the defendant was indicted and arraigned, his attorney asked the trial court to allow the defense to question the grand jurors concerning their qualifications and their knowledge of the defendant. The Arizona Supreme Court held that such questioning would be unnecessary and would merely be a "fishing expedition."

The Court reasoned that if defense counsel could establish a *prima facie* case of bias or prejudice on the part of any grand juror, the defense's remedy would lie in a motion under Rule 12.3 or Rule 12.9, Ariz. R. Crim. P. The Court stated:

Rules 12.3 and 12.9 provide the accused with opportunities to challenge a grand jury, a grand juror, or the grand jury proceedings. These rules, together with the judge's *voir dire* prior to empanelment, the reminder of the duty of self-disqualification where appropriate, and the requirement that the defendant receive a copy of the transcript of the proceedings, adequately protect an accused from bias or prejudice. In addition, "any grand jury taint . . . is purged by the burden of proof

imposed upon the state at trial and by the unbiased deliberations of the petit jury." *State v. Simms*, 201 Conn. 395, 518 A.2d 35, 40 (1986).

State ex rel. Hastings v. Sult, 162 Ariz. 112, 115, 781 P.2d 590, 593 (1989). An indictment will not be remanded to the grand jury if the error is harmless beyond a reasonable doubt, *i.e.*, did not affect the outcome. See *Maretick v. Jarrett*, 204 Ariz. 194, 199, ¶ 16, 62 P.3d 120, 125, ¶ 16 (2003). It is a violation of the defendant's due process rights when a police officer knowingly gives misleading testimony and the prosecutor shields the officer from grand jurors' questions. *Id.* at ¶20.